

GSA Board of Contract Appeals

6101.34

stated in 6101.33(a) and the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United States. Reconsideration, or a new hearing, may be granted on all or any of the issues. Arguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration. On granting a motion for a new hearing, the Board may open the decision if one has been issued, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions and direct the entry of a new decision.

(b) *Procedure.* Any motion under this rule shall comply with the provisions of 6101.8 and shall set forth:

- (1) The reason or reasons why the Board should consider the motion; and
- (2) The relief sought and the grounds therefor.

If the Board concludes that the reasons asserted for its consideration of the motion are insufficient, it may deny the motion without considering the relief sought and the grounds asserted therefor. If the Board grants the motion, it will issue an appropriate order which may include directions to the parties for further proceedings.

(c) *Time for filing.* A motion for reconsideration, to alter or amend a decision or order, or for a new hearing shall be filed in an appeal or petition within 30 calendar days and in a protest or application within 7 working days after the date of receipt by the moving party of the decision or order. Not later than 30 calendar days after issuance of a decision or order, the Board may, on its own initiative, order reconsideration or a new hearing or alter or amend a decision or order for any reason that would justify such action on motion of a party.

(d) *Effect of motion.* A motion pending under this section does not affect the finality of a decision or suspend its operation.

6101.33 Relief from decision or order [Rule 33]

(a) *Grounds.* The Board may relieve a party from the operation of a final decision or order for any of the following reasons:

(1) Newly discovered evidence which could not have been earlier discovered, even through due diligence;

(2) Justifiable or excusable mistake, inadvertence, surprise, or neglect;

(3) Fraud, misrepresentation, or other misconduct of an adverse party;

(4) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application;

(5) The decision is void, whether for lack of jurisdiction or otherwise; or

(6) Any other ground justifying relief from the operation of the decision or order.

(b) *Procedure.* Any motion under this section shall comply with the provisions of 6101.8 and 6101.32(b), and will be considered and ruled upon by the Board as provided in 6101.32.

(c) *Time for filing.* Any motion under this section shall be filed as soon as practicable after the discovery of the reasons therefor, but in any event no later than 120 calendar days or, in protests and in appeals under the small claims procedure of 6101.13, no later than 30 calendar days after the date of the moving party's receipt of the decision or order from which relief is sought. In considering the timeliness of a motion filed under this section, the Board may consider when the grounds therefor should reasonably have been known to the moving party.

(d) *Effect of motion.* A motion pending under this section does not affect the finality of a decision or suspend its operation.

6101.34 Harmless error [Rule 34].

No error in the admission or exclusion of evidence, and no error or defect in any ruling, order, or decision of the Board, and no other error in anything done or omitted to be done by the Board will be a ground for granting a new hearing or for vacating, reconsidering, modifying, or otherwise disturbing a decision or order of the Board unless refusal to act upon such error will prejudice a party or work a substantial injustice. At every stage of the proceedings the Board will disregard any error or defect that does not affect the substantial rights of the parties.

6101.35 Award of costs [Rule 35].

(a) *Requests for costs.* An appropriate prevailing party in a proceeding before the Board may apply for an award of costs, including if applicable an award of attorney fees, under the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f), the Equal Access to Justice Act, 5 U.S.C. 504, or any other provision that may entitle that party to such an award, subsequent to the Board's decision in the proceeding. For purposes of this section, "decision" includes orders of dismissal resulting from settlement agreements that bring to an end the proceedings before the Board.

(b) *Time for filing.* A party seeking an award may submit an application no later than 30 calendar days after a final disposition in the underlying protest or appeal. In the case of a protest or appeal that is adjudicated, the Board's decision becomes final (for purposes of this section) when it is not appealed to the United States Court of Appeals for the Federal Circuit within the time permitted for appeal or, if the decision is appealed, when the time for petitioning the Supreme Court for certiorari has expired. In the case of a protest or appeal that is resolved as a result of settlement, the Board's disposition becomes final (for purposes of this section) after receipt by the applicant of the order granting or dismissing the protest or appeal.

(c) *Application requirements.* An application for costs shall:

(1) Identify the applicant and the protest or appeal for which costs are sought, and the amount being sought;

(2) Establish that all applicable prerequisites for an award have been satisfied, including a succinct statement of why the applicant is eligible for an award of costs;

(3) Be accompanied by an exhibit fully documenting any fees or expenses being sought, including the cost of any study, analysis, engineering report, test, project, or similar matter. The date and a description of all services rendered or costs incurred shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of

the particular services performed by specific date, the rate at which each fee has been computed, any expenses for which reimbursement is sought, and the total amount paid or payable by the applicant on account of the sought-after costs. Except for claims for bid or proposal preparation, and in exceptional circumstances, all exhibits supporting applications for protest or appeal fees or expenses sought shall be publicly available. The Board may require the applicant to provide vouchers, receipts, or other substantiation for any costs claimed and/or to submit to an audit by the Government of the claimed costs; and

(4) Be signed by the applicant or an authorized officer, employee, or attorney of the applicant. The application shall also contain or be accompanied by a written verification under oath or affirmation, or declaration under penalty of perjury, that the information provided in the application is true and correct.

(5) If the applicant asserts that it is a qualifying small business concern, contain evidence thereof.

(6) If the application requests reimbursement of attorney fees that exceed the statutory rate, explain why an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies such fees.

(d) *Proceedings.* (1) Within 30 calendar days after receipt by the respondent of an application under this section, the respondent may file an answer. The answer shall explain in detail any objections to the award requested and set out the legal and factual bases supporting the respondent's position. If respondent contends that any fees for consultants or expert witnesses for which reimbursement is sought in the application exceed the highest rate of compensation for expert witnesses paid by the agency (appeals), or by the Federal Government (protests), respondent shall include in the answer evidence of such highest rate.

(2) Further proceedings shall be held only by order of the Board and only when necessary for full and fair resolution of the issues arising from the application. Such proceedings shall be minimized to the extent possible and